

Message Text

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PAGE 01 BRASIL 02893 01 OF 04 111401Z
ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 CIAE-00 DODE-00 DOTE-00
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EPA-01 /118 W

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TO SECSTATE WASHDC 7043
MARITIME ADMINISTRATION WASHDC
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

LIMITED OFFICIAL USE SECTION 1 OF 4 BRASILIA 2893

E.O. 11652: N/A
TAGS: EWWT, BR
SUBJ: MARITIME DISCUSSIONS WITH BRAZIL

SUMMARY: ASSISTANT SECRETARY BLACKWELL DISCUSSED WITH MINISTRY OF TRANSPORTATION GENERAL SECRETARY NEWTON CYRO BRAGA AND OTHER GOB OFFICIALS CIDETI'S DENIAL OF SEA-LAND'S APPLICATION TO OPERATE THIRTY-FIVE FOOT CONTAINERS IN BRAZIL AND EXPRESSED HIS CONCERN THAT IF THE DECISION DISCRIMINATING AGAINST SEA-LAND IS NOT REVERSED SERIOUS CONSEQUENCES COULD RESULT, AFFECTING NOT ONLY OUR MARITIME AND TRADE RELATIONS BUT ALSO EXPANDING INTO GENERAL ECONOMIC AND POLITICAL RELATIONS AS WELL. GENERAL BRAGA REFUSED TO ACKNOWLEDGE BLACKWELL'S ALLEGATIONS. CLAIMING THAT UNDER ITS SOVEREIGN RIGHTS BRAZIL MAY LEGISLATE AND ENFORCE ITS LAWS WITH A VIEW TOWARDS ITS OWN PROTECTION AND DEVELOPMENT. BLACKWELL'S ASSERTION THAT A CONFRONTATION WAS INEVITABLE IN THE ABSENCE OF SOME FLEXIBILITY IN THE BRAZILIAN ATTITUDE WAS NOT CHALLENGED BY GENERAL BRAGA. IN A LATER MEETING WITH MINISTER PROENCA ROSA,
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PAGE 02 BRASIL 02893 01 OF 04 111401Z

BLACKWELL APPEARED TO HAVE IMPRESSED THE MINISTER WITH THE SERIOUSNESS OF THE SITUATION AND REQUESTED HIS HELP IN PREVENTING THE SITUATION FROM ESCALATING INTO AREAS BEYOND THAT OF A MARITIME NATURE. END SUMMARY.

1. ON APRIL 4, 1978, ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS ROBERT J. BLACKWELL

ANF MEMBERS OF HIS DELEGATION, ACCOMPANIED BY EMBASSY OFFICERS, MET AT BRASILIA WITH GENERAL NEWTON CYRO BRAGA, SECRETARY GENERAL OF THE MINISTRY OF TRANSPORTATION AND HIS ADVISORS, INCLUDING COMANDANTE JOSE CARLOS FRANCO DE ABREU, ASSISTANT SECRETARY AND PRESIDENT OF CIDETI.

2 AFTER AND EXCHANGE OF CORDIALITIES, BLACKWELL STATED THAT THE PURPOSE OF HIS VISIT WAS TO SEEK RELIEF FORM THE CIDETI RECOMMENDATION WHICH ESSENTIALLY PRECLUDES SEA-LAND FROM OPERATING IN BRAZIL WITH THIRTY-FIVE FOOT CONTAINERS. HE EXPLAINED THAT HE UNDERSTANDS THAT UNDER BRAZILIAN LAW THE ULTIMATE DECISION IS TO BE MADE BY THE MINISTER OF TRANSPORTATION AND HE STRESSED THAT HE PURPOSELY SOUGHT A MEETING WITH MINISTER DYRCEU ARAUJO NOGUEIRA TO DISCUSS THE MATTER AND TO REQUEST RECONSIDERATION OF THE CIDETI DECISION.

3. THE ASSISTANT SECRETARY SAID THAT HE WAS MAKING IT AS CLEAR AS POSSIBLE THAT HE WAS NOT CHALLENGING BRAZIL BUT THAT AS HE UNDERSTANDS THE LAW, BRAZILIAN AUTHORIGIES MAY WAIVE OR EXEMPT CERTAIN PROVISIONS. HE MENTIONED THAT INASMUCH AS THE UNITED STATES DOES NOT PROHIBIT ENTRY OF ANY SIZE CONTAINERS INTO THE U.S. FROM BRAZIL, IT LIMITED OFFICIAL USE

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PAGE 03 BRASIL 02893 01 OF 04 111401Z

IS HIS POSITION THAT UNDER PRINCIPLES OF RECIPROCITY BRAZIL SHOULD ACTHACCORDINGLY. BLACKWELL INFORMED GENERAL BRAGA THAT, AS A MATTER OF FACT, U.S. LAW PROHIBITS DISCRIMINATION AGAINST THE CONTAINER SIZES AND HE EXPLAINED THAT THE THRUST OF THE LAW IS THAT THE MARKET WILL DETERMINE SIZE, NOT GOVERNMENT FIAT.

4. MR. BLACKWELL CAREFULLY EXPLAINED THAT SEA-LAND NOW OPERATED IN FIFTY-SIX COUNTRIES AND AREAS THROUGHOUT THE WORLD WITH BOTH THIRTY-FIVE AND FORTY-FOOT CONTAINERS. HE POINTED OUT THAT THE INTERNATIONAL STANDARDIZATION ORGNIZATION, WHICH HAS APPROVED CONTAINER SIZES IN MODULES OF HENS, I.I., 10, 20, 30 AND 40 FEET, IS A NON-GOVERNMENTAL, PRIVATE BODY AND THAT ADOPTING IS STANDARDS IS PURELY VOLUNTARILY. HE WENT ON TO SAY THAT ONLY BRAZIL HAS MADE THE ISO STANDRDS MANDATORY.

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PAGE 01 BRASIL 02893 02 OF 04 111425Z

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LIMITED OFFICIAL US SECTION 2 OF 4 BRASILIA 2893

MR. BLACKWELL INDICATED THAT THE U.S. GOVERNMENT
RECOGNIZES BRAZIL'S LEGITIMATE MARITIME INTERESTS
SUCH AS DETERMINATION OF EQUIPMENT SPECIFICATIONS WITH
RESPECT TO RAILROADS AND DOMESTIC TRUCKING
COMPANIES. BUT HE EMPHASIZED THAT THERE IS NO
QUESTION THAT THE SEA-LAND 35-FOOT CONTAINER ISSUES
SAFE, OR SAFER, THAN THOSE APPROVED BY ISO. HE SAID
THAT HE WOULD HAVE TO CONCLUDE AFTER HAVING STUDIED
THE WRITTEN DOCUMENT ON SEA-LAND'S PRESENTATION
GIVEN BEFORE CIDETI LAST FEBRUARY THAT THERE ARE
NO OPERATIONAL PROBLEMS INVOLVED IN THE PROPOSED
SEA-LAND VENTURE.

5. EMPHASIZING THAT THE DELEGATION WAS NOT IN
BRAZIL TO CREATE DIFFICULTIES, BUT RATHER TO AVOID
THEM, THE ASSISTANT SECRETARY AGAIN REQUESTED THAT
THE CIDETI DECISION BE REVERSED. HE TOLD THE
SECRETARY GENERAL THAT ANY FEARS WHICH BRAZIL HAS
REGARDING PROTECTION OF BRAZIL'S MARITIME
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PAGE 02 BRASIL 02893 02 OF 04 111425Z

INTERESTS ARE UNFOUNDED SINCE UNDER EQUAL
ACCESS AND CONFERENCE POOLING AGREEMENTS
BRAZILIAN VESSELS ARE ASSURED A PERCENTAGE OF

CARGOES, WHICH MAY NOT BE ENCROACHED UPON BY SEA-LAND OR ANY OTHER NON-BRAZILIAN CARRIER. HE EXPLAINED THAT THE ONLY ENCROACHMENT WILL COME FROM OTHER U.S. CARRIERS IN THE POOL. AND HE REITERATED THAT HE FAILED TO SEE HOW BRAZILIAN INTERESTS WILL BE AFFECTED BY THE ENTRY OF SEA-LAND INTO THE BRAZILIAN TRADE.

6. BLACKWELL TOLD GENERAL BRAGA THAT THE PROBLEM IS ESSENTIALLY A COMMERCIAL ONE, TO BE SOLVED BY THE LINES INVOLVED. HE MENTIONED THAT HE WAS EXTREMELY CONCERNED THAT UNLESS THERE IS SOME FLEXIBILITY IN THE BRAZILIAN POSITION SEA-LAND WILL HAVE NO ALTERNATIVE BUT TO INVOKE A SERIES OF LEGAL REMEDIES IN THE UNITED STATES. THESE REMEDIES WILL NOT BE DIRECTED AT THE LEGALITY OF BRAZILIAN LAWS AND DECREES BUT WILL ATTEMPT TO SHOW THAT SAAID LAWS ARE IN CONFLICT WITH EXISTING U.S. LEGISLATION AND POLICIES. HE CNFIDED THAT SEA-LAND HAS ALREADY FILED A LETTER WITH MARAD REQUESTING WITHDRAWAL OF EXPORT-IMPORT WAIVERS PURSUANT TO PR 17, WHICH MAY ONLY BE GRANDTED WHERE THERE IS NO EVIDENCE OF DISCRIMINATION AGAINST U.S. INTERESTS. IN ADDITION, THE ASSISTANT SECRETARY ICFORMED GENERAL BRAGA THAT SEA-LAND INTENDS TO FILE A COMPLAINT UNDER SECTION 301 OF THE TRADE ACT OF 1974 ALLEGING THAT THE ACTION OF CIDETI DISCRIMINATES AGAINST THE UNITED STATES AND ASKING FOR COUNTERMEASURES AGAINST BRAZIL. LIMITED OFFICIAL USE

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PAGE 03 BRASIL 02893 02 OF 04 111425Z

SEA-LAND ALSO PLANS TO FILE A COMPLAINT WITH THE FEDERAL MARITIME COMMISSION UNDER SECTION 19 OF THE MERCHANT MARINE ACT OF 1920, REQUESTING THE FMC TO DETERMINE IF UNFAVORABLE CONDITIONS EXIST IN THE U.S./BRAZIL TRADE AND IF FOUND SO, SEEKING RELIEF THEREFROM THROUGH RETALIATORY MEASURES. BLACKWELL ATTEMPTED TO IMPRESS UPON THE GENERAL THE SERIOUSNESS OF THE SITUATION AND HE EXPRESSED THE VIEW THAT IF SEA-LAND PURSUES ITS AVAILABLE LEGAL REMEDIES IN THE UNIAID STATES, NEIGHER THE SHORT NOR LANG TEAM INTERESTS OF EITHER COUNTRY'S MERCHANT MARINE OR TRADE WILL BENEFIT. AT THIS, MR. BLACKWELL INFORMED GENERAL BRAGA THAT HE HAS REQUESTED SEA-LAND TO DELAY LEGAL ACTION INNORDER THAT DISCUSSIONS CAN BE HELD IN AN ATTEMPT TO SOLVE THE PROBLEMS. AND THE ASSISTANT SECRETARY SUGGESTED THAT IF THE PROBLEMS AT HAND ARE NOT SOLVED, HE WAS CONCERNED THAT

EIGHT YEARS OF HARD AND DEDICATED WORK BY BOTH GOVERNMENTS TO BRING ABOUT TODAY'S STABILITY IN THE TRADE WILL COME TO AN END. BLACKWELL URGED THY SECRETARY GENERAL TO GIVE HIM SOME MESSAGE OF HOPE TO CARRY BACK TO SEA-LAND TO INDUCE THE COMPANY FROM INITIATING LEGAL ACTIONS UNDER THE REMEDIES AVAILABLE TO IT.

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PAGE 01 BRASIL 02893 03 OF 04 111426Z
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LIMITED OFFICIAL USE SECTION 3 OF 4 BRASILIA 2893

7. THE ASSISTAND SECRETARY INDICATED THAT IN ALL OF HIS EXPERIENCE IN THE MARITIME FIELD HE HAS NEVER SEEN A PROBLEM THAT IS SO TOTALLY COMPATIBLE WITH A COMMERCIAL SOLUTION. AND HE REPEATED THAT HIS BASIC CONCERN IS THAT IF THE PROBLEM IS NOT SOLVED ON A REASONABLE BASIS WITHIN A REASONABLE TIME FRAME, SEA-LAND WILL BE FORCED TO TAKE STEPS WHICH COULD SERIOUSLY DAMAGE NOT ONLY OUR SHIPPING AND TRADING RELATIONS, BUT OUR ECONOMIC AND POLITICAL RELATIONS AS WELL.

8. AT THE OUTSET GENERAL BRAGA SAID THAT HE HAD THOUGHT THAT THE BLACKWELL VISIT WAS OF A COURTESY NATURE ... AND THAT HE WAS NOT PREPARED TO DISCUSS, NOR COULD HE REMEMBER, ALL OF MR. BLACKWELL'S QUESTIONS, BUT THAT HE WOULD ATTEMPT TO ANSWER THOSE WHICH HE WAS ABLE. HE BEGAN BY SAYING THAT

BRAZIL HAS NOTHING AGAINST SEA-LAND, UT ONLY
AGAINST ITS THIRTY-FIVE FOOT CONTAINERS WHICH ARE
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PAGE 02 BRASIL 02893 03 OF 04 111426Z

CONTRARY TO THE NATION'S LAW. HE EMPHASIZED THAT
CIDETI STUDIED ISO FOR ABOUT A YEAR BEFORE ADOPTING
THE 20/40 FOOT STANDARDS, AND HE INDICATED THAT
TECHNICAL CONDITIONS WERE THOROUGHLY CONSIDERED
BEFORE ARRIVING AT THE CIDETI DECISION. THE
GENERAL DISAGREED THAT LEA-LAND HAS BEEN OR IS
BEING DISCRIMINATED AGAINST. "ABSOLUTELY NO
DISCRIMINATION," HE STRESSED. HE POINTED OUT THAT
ANY LINE, WHETHER IT BE GERMAN, U.S. OR ENGLISH,
MUST MEET BRAZILIAN STANDARDS UNDER THE LAW.

9. GENERAL BRAGA THEN CITED WHAT HE SAID WERE
INSTANCES OF U.S. DISCRIMINATION AGAINST BRAZIL,
GIVING AS AN EXAMPLE SHOPS. "OTHER BRAZILIAN
ARTICLES ARE ALSO RESTRICTED TO ENTER THE UNITED
STATES UNDER YOUR LAWS," HE SAID. ON THE QUESTION
OF REOPENING NEGOTIATIONS, THE GENERAL INFORMED THE
ASSISTANT SECRETARY THAT HE WAS NOT AWARE OF ANY
CONFLICT IN LAWS BETWEEN THE TWO COUNTRIES. BUT
HE SUGGESTED THAT IF WE FELT THAT WAY, A HIGHER
AUTHORITY IN THE FOREIGN MINISTRY SHOULD STUDY THE
MATTER. HE MADE IT CLEAR THAT HE COULD NOT ACCEPT
BLACKWELL'S PROPOSITION THAT THERE IS A CONFLICT OF
LAWS AND HE WENT ON TO SAY THAT THE CIDETI DECISION
IS PRACTICALLY A GOVERNMENT DECISION SINCE SIX
MINISTRIES ARE INVOLVED AND THAT, THEREFORE, THE
MINISTRY OF TRANSPORTATION COULD NOT REOPEN THE
MATTER WITH CIDETI ON HIS OWN. HOWEVER, HE NOTED
THAT SEA-LAND COULD REAPPLY TO APPEAR BEFORE CIDETI
AT ANY TIME.

10. ON THE SUBJECT OF RECIPROCITY, THE GENERAL
SECRETARY INDICATED THAT SINCE BRAZIL DOES NOT
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PAGE 03 BRASIL 02893 03 OF 04 111426Z

HAVE THIRTY-FIVE FOOT CONTAINERS, RECIPROCITY IS NOT
AN APPLICABLE ISSUE. HE MADE IT CLEAR THAT UNDER ITS
SOVEREIGNTY, BRAZIL CAN DECIDE WHAT IT SHOULD OR
SHOULD NOT LEGISLATE. HE ALSO SAID THAT HE WAS
NOT EXPECTING MR. BLACKWELL TO REQUEST A REVERSAL
OF THE CIDETI DECISION. "ONLY BRAZIL KNOWS WHY IT
NEEDS THIS PROTECTION," HE SAID. "THE U.S. HAS A

STRONG ECONOMY, BUT BRAZIL HAS NOT." HE THEN REITERATED THAT THERE IS NO DISCRIMINATION AGAINST SEA-LAND OR ANY OTHER U.S. COMPANY AND THAT "WE CANNOT ACCEPT STANDARDS WHICH ARE NOT IN OUR INTEREST."

1. THE ASSISTANT SECRETARY REPLIED THAT HE THOUGHT HE HAD MADE IT CLEAR THAT NEITHER HE NOR SEA-LAND WERE QUESTIONING BRAZILIANS'S SOVEREIGNTY OR LAWS, BUT THAT THE COMPANY WAS REQUESTING A WAIVER OR EXEMPTION FROM THE LAW. MR. BLACKWELL THEN EMPHASIZED THAT IN HIS VIEW IT IS MEANINGLESS TO ARGUE THAT SEA-LAND CANNOT OPERATE IN BRAZIL SIMPLY BECAUSE IT DOES NOT USE THIRTY-FIVE FOOT CONTAINERS. AND HE POINTED OUT TO THE GENERAL THAT SINCE NO OTHER CARRIER IN THE WORLD USES THIRTY-FIVE FOOTERS, DE FACTO DISCRIMINATION RESULTS. HE SAID THAT THE DECISION AS TO WHETHER OR NOT DISCRIMINATION EXISTS WILL HAVE TO BE DETERMINED IN A HIGHER FORUM. HE EXPLAINED THAT HE HAD A UNIQUE RESPONSIBILITY TO ISSUE WAIVERS ON EXIM CARGOES, BASED ON HIS FINDINGS, AND HE INDICATED THAT TODAY HE WOULD HAVE A GREAT DEAL OF DIFFICULTY IN GRANTING A WAIVER TO A BRAZILIAN

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PAGE 01 BRASIL 02893 04 OF 04 111439Z
ACTION EB-08

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LIMITED OFFICIAL USE SECTION 4 OF 4 BRASILIA 2893

COMPANY. CONCLUDING, MR. BLACKWELL SAID THAT HE

FEARED THAT HIS MISSION HAS BEEN A FAILURE AND THAT "WE WILL NOT BE ABLE TO AVOID A CONFRONTATION." HE THEN HANDED GENERAL BRAGA A LETTER AND REQUESTED THAT HE DELIVER IT TO MINISTER NOGUEIRA. MR. BLACKWELL EXPLAINED THAT THE LETTER SETS FORTH THE POINTS ELUCIDATED BY HIM DURING THE MEETING, AND ASKS FOR THE MINISTER'S HELP IN SOLVING THE PROBLEM AT HAND.

12. AT THE CLOSE OF THE MEETING, GENERAL BRAGA AGAIN MENTIONED THAT THE CIDETI DECISION IS THE MINISTER'S DECISION BUT THAT IN ANY EVENT TO CHANGE A CIDETI DECISION, ALL SIX MINISTRIES WOULD HAVE TO BE CONSULTED. HE EXPLAINED THAT CIDETI IS SUBORDINATE TO THE MINISTRY OF TRANSPORTATION BUT ONLY FOR ADMINISTRATIVE PURPOSES. BRAGA'S FINAL WORDS WERE THAT BRAZIL HAS NEVER HAD A PROBLEM WITH ANY OTHER U.S. LINE; THAT THE U.S. LIMITED OFFICIAL USE

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PAGE 02 BRASIL 02893 04 OF 04 111439Z

HAS A STRONG ECONOMY, WHEREAS BRAZIL DOES NOT; AND THAT SEA-LAND IS TRYING TO IMPOSE A SYSTEM ON BRAZIL WHICH IT DOES NOT WANT.

13. A BRIEFMEETING THEN TOOK PLACE IN COMANDANTE ABREU'S OFFICE IN WHICH SOME OF THEPOINTS DISCUSSED IN THE MEETING WITH THE GENERAL SECRETARY WERE REVIEWED. ABREU CONFIRMED TO BLACKWELL THAT SEA-LAND COULD APPLY TO APPEAR BEFORE CIDETI AS MANY TIMES AS IT WISHES.

14. DURING THE AFTERNOON, ASSISTANT SECRETARY BLACKWELL HAD A BRIEF BUT INFORMATIVE MEETING WITH MINISTER CARLOS AUGUSTO DE PROENCA ROSA, FONMIN'S CHIEF OF THE ECONOMIC DEPARTMENT, IN WHICH MR. BLACKWELL, AFER RECAPING THEPOINTS MADE IN HIS CONVERSATION WITH GENERAL BRAGA, SAID THAT HE WAS ASKING THE MINISTER FOR HIS HELP IN PREVENTING A SERIOUS SITUATION FROM ESCALATING INTO AREAS OTHER THAN MARITIME. THE MINISTER SAID THAT HE HAD BEEN BRIEFED ON THE MATTER AND THAT HE AGREED THAT BOTH SIDES SHOULD WORK TOWARDS A SOLUTION OF THE IMMEDIATE PROBLEM BEFORE FURTHER COMPLICATIONS DEVELOPED. HE SAID THAT BRAZIL'S PHILOSOPHY IS NOT TO DISCRIMINATE, BUT THAT HE UNDERSTOOD THE SERIOUSNESS, IMPORTANCE AND IMPLICATIONS OF THE SUTUATION. HE ALSO INDICATED THAT CIDETI WOULD BE WILLING TO LISTEN TO SEA-LAND AGAIN, BUT HE CAUTIONED THAT THE USG SHOULD SERIOUSLY CONSIDER THE IMPLICATIONS IN THE EVENT THAT WE LOSE CONTROL.

ABOVE MESSAGE WAS PREPARED BY MARATT.
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PAGE 03 BRASIL 02893 04 OF 04 111439Z

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